IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15781 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRDHARI @ HARU CHHACHHUMAL TOLANI (SINDHI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15781 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 16/03/2004

ORAL JUDGEMENT

The peitioner-detenu has preferred this petition

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 25.9.2003 passed by respondent no.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA ACt') directing detention of the present petitioner.

2. The petitioner has challenged the above order on several grounds. The petitioner has contended that the detaining authority has claimed privilege under section 9(2) of the said Act. However, the correctness and genuineness of the contents of those statements have not been verified. It has also been contended that the detaining authority has caused delay in passing the order of detention after verification of the statements of witnesses. It has further been contended that there is also a delay in dealing and deciding representation of the petitioner. It has further been contended that the co-accused has been released and his detention has not been approved by the State Government. It has further been contended that the order in question may amount to a threat to law and order situation and it cannot be termed as a threat to public order. That on the whole, the detention order is illegal and deserves to be set aside. The petitioner, therefore, prays that the present petition be allowed, the impugned detention order against the petitioner dated 25.9.2003 be set aside and the petitioner be set at liberty forthwith.

3. On receipt of the petition, rule was issued and in response to the service of notice of rule, Ms. Paurnami B Sheth, learned AGP appears on behalf of the respondents. She has tendered affidavit of the detaining authority which has been placed at page 30 to the petition. I have heard the learned Advocate for the petitioner and the learned AGP for the State. They have taken me through the petition and also through the accompaniments to the detention order.

4. Learned Advocate for the petitioner has argued at length that the order in question shows that the petitioner has been branded as a bootlegger inasmuch as two prohibition cases have been registered against him in connection with Sahyajiganj police Station C.R. III 319/03 dated 3.9.2003 and JP Road police station C.R. No.III 291/03 dated 3.9.2003. This can be gathered from the grounds for detaining the petitioner placed at Annexure 'B' page no.19. Over and above the aforesaid two offences registered against the petitioner, two

unnamed witnesses have given statements against the petitioner. Details of those statements can be gathered at page no.20. It appears from the statement of witness No.1 that on 26.8.2003, at about 6.30 p.m. the petitioner had threatened the witness and he had also beaten him. That on account of the said event, many persons had gathered together and at that point of time, the petitioner had taken out a knife and had tried to cause injuries to the persons who had gathered together there. That therefore, the persons who had gathered together there had run away from the spot. So far as the second witness is concerned, the incident is said to be on 1.9.2003. There also the petitioner is said to have beaten the persons gathered there.

5. On the strength of the said two prohibition cases and on the strength of the statements of the said unnamed witnesses, the detention order has been passed. Learned Advocate for the petitioner has argued that this would be a situation threatening law and order and it cannot be termed as a situation raising threat to public order. In this connection, learned Advocate for the petitioner has relied upon a decision of this Court in Special Civil Application No.16720/2003 dated 10.3.2004 wherein it has been held that registration of a few prohibition cases and statements of unnamed witnesses of the above nature may give rise to a threat to law and order situation but it cannot be treated to be a threat to public order. It is well settled that before an order of detention is passed by detaining authority, there must be a situation giving rise to a threat to public order. In several decisions, term 'law and order' and 'public order' have been distinguished. Any way, these are not the two words carrying same meaning. In that view of the matter, by following the principles laid down in the aforesaid decision dated 10.3.2004, I am of the view that the situation in the present case may amount to a threat to law and order situation and it cannot be termed as a threat to public order. In that view of the matter, since there is no threat to public order, the detention order cannot be sustained in the eye of law.

6. It has also been contended by the learned Advocate for the petitioner in the petition itself that in fact there were three accused persons involved in the aforesaid offences and out of them one Manoj Kantilal Marwadi, was also detained by the same detaining authority. That when the matter went to the State Government, the State Government did not approve the detention of the said detenu. Therefore, he was ordered to be released. It has been contended at page 14 of the

petition that the petitioner as well as the said detenu were both stood on the same footing and when the detention of the said detenu was not approved by the State Government, there was no necessity for approving the detention of the petitioner. That therefore also considering the above position on the part of the State Government, the detention order passed against the petitioner cannot be termed as legal. On this point, we find that the State Government has not come out with any clear case as to why there is discriminatory treatment by the State Government in respect of the two detenus sailing in the same boat. Therefore, even on the ground of parity, the present petitioner deserves to be released from the detention. Therefore, the detention order against him can be termed as illegal.

7. It has further been contended that the aforesaid two offences were registered against the petitioner on 3.9.2003 and the statements of unnamed witnesses were recorded on 7.9.2003. They were verified by the detaining authority on 17.9.2003. However, the impugned order came to be passed on 25.9.2003. The learned Advocate for the petitioner has contended that the above delay has not been explained. In reply to this, the learned AGP has drawn my attention to para 15 of the affidavit of respondent no.2 wherein the above details have been reiterated. However, it has not been mentioned as to why there was a delay in passing the impugned order of detention after verification of the statements of two unnamed witnesses by the detaining authority. Learned AGP has tried to explain the position by arguing that the said authority was busy with so many other duties and therefore, the impugned order could not have been passed very promptly. This explanation cannot be accepted even for a while. In above view of the matter, the impugned order passed against the petitioner cannot be sustained in the eye of law. Therefore, it is required to be quashed and set aside. In that view of the matter, it would not be necessary to consider and deal with other contentions raised by the learned Advocate for the petitioner referred to hereinabove.

7. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 25.9.2003 passed by respondent No.2 detaining the petitioner under section 3 (2) of the PASA Act is ordered to be quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. D.S. permitted.

[D P Buch, J.

msp